

REMARKS

Claims 15-21 remain in this application, with claim 15 being the sole independent claim.

I. Petition to Revive – Unintentional Delay:

Applicants concurrently submit this Request together with a Petition to Revive Under 37 CFR § 1.137(b).

II. Claim Rejections on Prior Art Grounds:

The Examiner rejects claims 15-21 under 35 USC § 102(e) as being anticipated by US 5,933,224 to Hines et al. (“Hines”); and claim 15 under 35 USC 102(b) as being anticipated by US 5,594,584 to Kay et al. (“Kay”). Applicants respectfully traverse these rejections in view of the following remarks.

To be an “anticipation” rejection under 35 USC § 102, the reference must teach each and every element and feature of Applicants’ claims. Rejections under 35 USC § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose each and every element and feature of the claimed invention. In this case, Applicants respectfully submit that each of Hines and Kay fails to teach each and every element and feature of independent claim 15. The two references, and their associated shortcomings, are discussed separately below.

A. The Hines Reference:

As shown in Fig. 3 of Hines, the disclosed distance measurement apparatus 100 includes a laser diode 120, a transmit lens 104, a receive lens 106 and a photodiode receiver 118. The apparatus 100 also includes a view finder 108 with a tube 126, a reflector/window 134 and a view finder light 124. That is, the apparatus 100 includes two light sources; *i.e.*, the laser diode 120 and the view finder light 124.

i) The Laser Diode 120 is not Relevant:

The Examiner compares Hines' laser diode 120 to the claimed "light source," and contends that the laser diode 120 emits light toward the reflector/window 134 to produce a light spot on the reflector/window 134.¹ However, according to Hines' straightforward disclosure, the laser diode 120 generates a beam of light that transmits through the transmit lens 104.² The light beam from the laser diode 120 does not (and necessarily cannot) impinge upon the reflector/window 134. This is because, as clearly shown in Fig. 3, the housing of the apparatus 100 interposes between the laser diode 120 and the reflector/window 134.

Furthermore, according to claim 15, the light source is "located in said tube." In contrast, as clearly shown in Fig. 3 of Hines, the laser diode 120 is located on the outside of the tube 126. The tube 126, in which the reflector/window 134 is situated, also prevents the light beam from the laser diode 120 from impinging upon the reflector/window 134.

Turning to the next point, the Examiner compares several features of Hines' electronic unit 122 to the claimed invention. As recognized by the Examiner, however, the electronic unit 122 controls the laser diode 120, which is not relevant to the claimed invention for the reasons discussed above. Accordingly, the electronic unit 122 is not relevant to the "energizing circuit" or the "control means" defined by claim 15.

ii) The View Finder Light 124 is not Relevant:

Applicants acknowledge that the view finder light 124 produces a light spot on the reflector/window 134 that is superimposed on the view in front of the view finder 108.³ However, as clearly shown in Fig. 3 of Hines, the view finder light 24 is located on the outside of the tube 126, not "in said tube" as claimed. Further, the reference does not teach or suggest that the view finder light 124 is a laser diode.

¹ Office Action, numbered paragraph 2.

² Hines, col. 7, lines 38+.

³ Hines, col. 22, lines 22+

Finally, Hines only indicates that the view finder light 124 can be turned on and off by means of a switch 144.⁴ The reference does not, however, contain any relevant teachings concerning how the view finder light 24 is connected to an energizing circuit, much less one that applies a pulsating electric current to the view finder light 24, or one that is connect to control means for adjusting an intensity of the light spot generated by the view finder light 124.

As demonstrated above, claim 15 recites features that are practically and conceptually different than Hines. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the raised anticipation rejection.

B. The Kay Reference:

With reference to Fig. 2 of Kay, the disclosed dot sighting device includes a tube 3 with a red light emitting diode 14.⁵ A light spot is produced on a partially reflecting surface 11 of an objective element 1 at one end of the tube 3.

The Examiner compares Kay's red light emitting diode 14 to the claimed "light source."⁶ This is simply incorrect because Kay's red light emitting diode 14 does not include "a laser diode," as claimed. In this regard, the Examiner's heavy reliance upon Kay is misplaced.

The Examiner also maintains that Kay inherently discloses a power source applying a pulsating electric current to the light emitting diode 14.⁷ It is well settled that in relying upon a theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. The Examiner has not met this burden. The only support the Examiner offers for the contention is the contention itself. The grounds of rejection do not provide any objective evidence from Kay, or cogent technical reasoning, to support the conclusion of inherency. No objective evidence or technical reasoning is provided because none

⁴ Hines, col. 22, lines 14-16.

⁵ Kay, col. 4, line 46.

⁶ Office Action, numbered paragraph 3.

⁷ Id.

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exists. This is because Kay is completely silent regarding the control features for energizing the red light emitting diode 14. In this regard, the Examiner's position is incorrectly based on speculation.

As demonstrated above, claim 15 recites features that are practically and conceptually different than Kay. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the raised anticipation rejection.

III. Conclusion:

For at least the reasons discussed above, Applicants earnestly solicits reconsideration and allowance of all of the claims.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-4446 for any additional fees required under 37 CFR § 1.16 or under 37 CFR § 1.17; particularly, extension of time fees.

Respectfully submitted,

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